



## MEMORANDUM

**To: PLANNING COMMISSION**

**Date: September 26, 2006**

**From: COMMUNITY DEVELOPMENT DEPARTMENT**

**Subject: DEVELOPMENT AGREEMENT AMENDMENT DAA: 05-05: Central-Delco**

### REQUEST

The applicant is requesting an amendment to an approved development agreement for a 39-unit project located on the north side of East Central Ave. at the terminus of Calle Mazatan. The specific amendment request is to allow for an 8-month extension of time for obtaining building permits and a 3 month extension of the commencement of construction date.

### RECOMMENDATION

Environmental Assessment: Not applicable

Application: Adopt resolution approving an 8-month extension to the "obtain building permit" date and a three month extension to the "commence construction" date.

Processing Deadline: April 30, 2007

### BACKGROUND

In February 2006, the City Council and Planning Commission approved of a 39 lot subdivision and development agreement for the Viento development. Exhibit B of the development agreement requires that 19 (FY 2006-07) building permits be issued by September 30, 2006 and have commenced construction by March 31, 2007.

### **CASE ANALYSIS**

The applicant is requesting two amendments to the project's development schedule contained in Exhibit B of the project's development agreement. The reason for the request is the seasonal timing of the current dates for the 19, FY 2006-07 allocations. The Viento project has secured all of its necessary planning approvals and is in the process receiving final map and improvement plan approvals. The Public Works Department staff has confirmed it may be another 5-6 weeks before the project can begin moving dirt for the off-site improvements and on-site grading.

The applicant has acknowledged that they will not be able to meet the current requirement to obtain 19 building permits by the end September. Once the improvement plans and bonds can be secured, the subdivision improvements may be approved by the City Council. The timing of this process likely means the applicant will not be able start grading and obtain building permits until early to mid November which is beginning of the rainy season. The applicant would like to stay in compliance with the development agreement but does not want to have to pay to obtain building permits and then hold them until March/April when the ground dries. The applicant is proposing May 15, 2007 as a new "obtain building permit" date which is normally when construction can resume. To allow for sufficient time to meet the commencement of construction threshold, the applicant is also requesting a three month extension of the commence construction deadline. The applicant's letter of request is attached.

### **RECOMMENDATION**

The project to date has been diligent in pursuing all of its necessary approvals. Staff recommends that the "Obtain Building permit" date be adjusted 8 months to May 15, 2007 and the "Commence Construction date be adjusted 3 months to June 30, 2007.

### **Attachments:**

1. Letter from applicant
2. Resolution

## **RESOLUTION NO. 06-**

### **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING APPROVAL OF DEVELOPMENT AGREEMENT AMENDMENT APPLICATION DAA-05-05 FOR APPLICATION MP-04-14: CENTRAL-HU(DELCO) TO ALLOW FOR AN EIGHT MONTH EXTENSION OF TIME FOR OBTAINING BUILDING PERMITS AND A THREE MONTH EXTENSION OF THE COMMENCE CONSTRUCTION DATE FOR 19 ALLOCATIONS RECEIVED IN THE 2004 RDCS COMPETITION. (APN 726-26-004)**

**WHEREAS**, the City Council of the City of Morgan Hill has adopted Resolution No. 4028, establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Morgan Hill Municipal Code; and

**WHEREAS**, Sections 65864 through 65869.5 of the California Government Code authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property; and

**WHEREAS**, the Planning Commission, pursuant to Chapter 18.78.380 of the Morgan Hill Municipal Code, awarded 39 building allotments for application MP 04-14: Central-Hu (Delco); and

**WHEREAS**, in February 2006, the City Council approved the development agreement for application MP 04-14: Central-Hu (Delco); and

**WHEREAS**, the applicant is requesting to amend the approved development agreement to allow for an 8 month extension to the "obtain building" permit deadline and a 3-month extension of the "commence construction" date for 19 building allotments awarded for FY 2006-07; and

**WHEREAS**, the current development schedule would require the site preparation and construction of 19-units during the winter months which may result in an unnecessary hardship for the developer.

**WHEREAS**, said development agreement amendment was considered by the Planning Commission at their regular meeting of September 26, 2006, at which time the Planning Commission recommended approval of development agreement amendment application DAA-05-05: Central-Delco.

**WHEREAS**, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.



**RESOLUTION NO.**  
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**NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES  
RESOLVE AS FOLLOWS:**

**SECTION 1. ADOPTION OF DEVELOPMENT AGREEMENT AMENDMENT.** The Planning Commission hereby recommends to the City Council adoption of the modified Development schedule for MP 04-14: Central-Hu (Delco); attached to this resolution as Exhibit B.

**PASSED AND ADOPTED THIS 26TH DAY OF SEPTMBER 2006, AT A REGULAR  
MEETING OF THE MORGAN HILL PLANNING COMMISSION BY THE  
FOLLOWING VOTE:**

**AYES: COMMISSIONERS:**

**NOES: COMMISSIONERS:**

**ABSTAIN: COMMISSIONERS:**

**ABSENT: COMMISSIONERS:**

**ATTEST:**

**APPROVED:**

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**FRANCES O. SMITH, Deputy City Clerk**

\_\_\_\_\_  
**ROBERT J. BENICH, Chairman**

**EXHIBIT "B"**  
**DEVELOPMENT SCHEDULE MP-04-14: Central-Hu**  
**FY 2006-07, 19 allocations/FY 2007-08, 5 allocations/FY 2008-09, 15 allocations**

<b>I. SUBDIVISION AND ZONING APPLICATIONS</b>			
Applications Filed:			7-29-05
<b>II. SITE REVIEW APPLICATION</b>			
Application Filed:			05-30-06
<b>III. FINAL MAP SUBMITTAL</b>			
Map, Improvements Agreement and Bonds:			
FY 2006-07 (19 units)			04-30-06
FY 2007-08 (5 units)			02-28-07
FY 2008-09 (15 units)			02-28-08
<b>IV. BUILDING PERMIT SUBMITTAL</b>			
Submit plans to Building Division for plan check:			
FY 2006-07 (19 units)			07-30-06
FY 2007-08 (5 units)			06-15-07
FY 2008-09 (15 units)			06-15-08
<b>V. BUILDING PERMITS</b>			
Obtain Building Permits:			
FY 2006-07 (19 units)	<b>05-15-07</b>	<del>09-30-06</del>	
FY 2007-08 (5 units)		09-30-07	
FY 2008-09 (15 units)		09-30-08	
Commence Construction:			
FY 2006-07 (19 units)	<b>06-30-07</b>	<del>3-31-07</del>	
FY 2007-08 (5 units)		06-30-08	
FY 2008-09 (15 units)		06-30-09	

Failure to obtain building permits and commence construction by the dates listed above shall result in the loss of building allocations. Submitting a Final Map Application or a Building Permit two (2) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 21 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

LAPIDUS AND ASSOCIATES

REAL ESTATE DEVELOPMENT PLANNING

991 SOLANA COURT, MOUNTAIN VIEW, CA 94040  
PHONE: 650-949-1529 FAX: 650-383-5007  
DONLAPIDUS@EARTHLINK.NET

August 28, 2006

PLANNING DEPT.

AUG 30 2006

Terry Linder, Senior Planner  
City of Morgan Hill  
17555 Peak Ave.  
Morgan Hill, CA 95037-4128

Project: Viento

Subject: Request for a Development Agreement (DA) Amendment/ Extension of Time

Dear Terry,

Thank you for our telephone conversation last week in which we discussed the status of the subject project. As you know, we are required to obtain Building Permits for Phase I (FY 2006-07, 19 homes) prior to September 30, 2006. As we discussed, we are nearing the rainy season and if it rains as it did last year, the grading process may take significantly longer than it normally would. Although our building permit plans and applications are in process and we will try to meet the existing schedule, we are concerned that inclement weather will hamper our efforts.

As you advised, to insure that we do not default on our DA and to avoid carrying costly fees through the winter, we are requesting an amendment extending the time required to obtain said Building Permits and "Commence Construction". Specifically, we are requesting the following modification (See attached Exhibit "B").

1. Building Permits FY 2006-07 (19 units): From September 30, 2006 to May 15, 2007; and
2. Commence Construction FY 2006-07 (19 units): From March 31, 2007 to June 31, 2007.

As you can see, we are only asking for an extension of time for Phase I (19 lots). Once we complete Phase I, including all street improvements, future phases should fall into place and be completed in a timely manner.

Therefore, we hereby request the City Council to grant our request for this DA Amendment and approve an Extension of Time. To facilitate this request we are enclosing the following information:

1. A Uniform Application;
2. A \$2350.00 check for the processing fee; and
3. A copy of Exhibit "B" showing the proposed changes.

Lapidus/ Linden

8/27/06

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If you have any questions or need additional information, please contact me immediately and we will respond accordingly. Thank you again for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Lapidus", with a stylized flourish at the end.

Don Lapidus

Cc: Bob Weiss